80-2150

No. .....

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Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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QUESTION PRESENTED

1. Were the Landrum-Griffin Freedom of Speech Political Rights of fifteen (15) appointed business agents violated by the summary wholesale discharge of the business agents by the prevailing presidential candidate, Harold D. Leu, for their support of the opposition candidate, Omar L. Brown, in the 1977 officers' election for Teamsters Local 20?

LIST OF ALL PARTIES

The petitioners are: Donald Finnegan, Bobby Haney, Ronald Bowman, Denver Phillips, William Tank, Richard Eddington, Charles Winters, and Edward Stricklin. The petitioners represent eight of the original fifteen business agents who were discharged by Harold D. Leu upon his defeat of Omar L. Brown during the 1977 Teamsters Local 20 Officers' Election.

The Plaintiffs in the Court below included the above-named petitioners as well as seven other business agents who were also summarily discharged for their political support of candidate Brown. The other plaintiffs include Raymond Navarro, who renounced his political support for Brown and returned to work for Leu, James Root the vice president elected during the 1977 officers election who has since died, Frank Howald who left the Teamster industry and took a job with management, and Harry Starkey, John Clark, Donald Jahns and Levernon Hubbard who have elected not to join in the appeal for financial reasons.

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No. .....

Supreme Court of the United States

October Term, 1980

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

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Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

OPINION BELOW

The opinion and order of the United States District Court for the Northern District of Ohio Western Division granting the Defendants' motion for summary judgment is reproduced in the Appendix at page A4. The Opinion and Order of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court is reproduced in the Appendix at page A1.

JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1981, and issued as a mandate on or about June 11, 1981. The petitioners had originally attained an order staying the mandate for thirty (30) days on May 12, 1981, but did not seek to continue the stay of the mandate. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves §401(a)(1) and (2) and §529 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §411(a)(1) and (2) and 29 U.S.C. §529, commonly known as the Landrum-Griffin Act with Title I of the Act known as the "Bill of Rights of members of labor organizations" (Appendix page A9).

STATEMENT OF THE CASE

This suit was originally brought by fifteen (15) appointed business agents who were summarily discharged by Harold D. Leu, the prevailing presidential candidate during the 1977 Teamsters Local 20 officers' election. Defendant Leu discharged all the business agents as his first official act in office after his defeat of his opposition candidate Omar L. Brown in retaliation for the business agents' political support for Brown.

The facts giving rise to this appeal can be simply stated. Local 20 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization of some 12,500 members in Northwestern

Ohio. From its inception some twenty-five years ago, it has had only four presidents, one of whom served a term of nine months (Tr. 61-63).[1]

The first seriously contested election for the officership of Local 20 occurred in December of 1974. The December 1974 election, which pitted a slate headed by Omar L. Brown against a slate headed by Harold D. Leu, found Leu the winner by some forty-odd votes. The election was set aside by the International Brotherhood of Teamsters pursuant to Brown's internal union appeal as a result, *inter alia*, of irregularities which occurred at the polling places. A second election which occurred in September of 1975 found the same two candidates pitted against one another, only this time Omar L. Brown was the victor by well over five hundred votes.

December, 1977 brought the third election to Local 20 in less than three years with the same two candidates facing one another. This time Leu was declared the victor by twenty-nine votes, and the Brown slate filed another protest, complaining of union election violations. The internal protest was investigated by the International Union and denied. Brown then filed a complaint with the Secretary of Labor.[2]

Needless to say, campaigning on behalf of both slates in the December, 1977 election was vigorous (Tr. 63).

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1. "Tr." refers to the pages in the appendix in the Court of Appeals.

2. After an investigation, the Secretary of Labor determined that employer contributions may have affected the outcome of the election and suit was brought in the District Court for the Northern District of Ohio. After a trial on the merits the Trial Court found that there indeed were election violations and ordered a rerun election under the supervision of the Secretary of Labor. During the supervised rerun election incumbent Harold Leu defeated Omar Brown by the narrow margin of 165 votes out of some 6500 votes cast.

Plaintiff-Petitioners in this case were employed as business agents under the Brown administration, which held office from September, 1975 to December, 1977. Each of them was, at all material times mentioned herein, a member in good standing of Teamsters Local 20.

It is undisputed that as business agents each was an *appointed* official of the union appointed pursuant to the Bylaws of the Local by the then President of Local 20, Omar Brown. Plaintiff-Petitioners were appointed by President Brown because of all the former business agents under the Leu administration resigned *en masse* prior to Brown's officially taking office in September of 1975 (Tr. 72, 127). In past elections, business agents were not summarily discharged (Tr. 77, 127).

After Leu's victory was determined, he was sworn into office on Friday, December 30, 1977, late in the afternoon. The union offices were closed for the weekend, as well as on Monday, January 2, 1978, in celebration of the new year. On January 3, 1978, Leu's first official day in office, he called all of the Plaintiffs-Petitioners to a meeting and fired them wholesale, without notice, giving as his reason that they were "loyal to Brown and not to him" and that "he believed that they would not follow his policies and programs implemented under his administration." (Tr. 70, 90-91).

Prior to the wholesale discharge of the business agents Leu did not seek out any of them in order to ask them whether they would work under his administration nor did he seek out other officers of the Local to determine which agents would be willing to support his platforms (Tr. 89-91). He summarily discharged these agents without a hearing, even though they had pledged their support to the Local under his administration pursuant to Mr. Brown's request (Tr. 66-67). He was bitter because they had sup-

ported Omar Brown and had campaigned against him (Tr. 90-91).

Later as President, Leu undertook a course of action directed at denying the business agents employment within the jurisdiction of Local 20, which ultimately resulted in many of them being denied membership within the Local Union (Tr. 331-339).

Once terminated most of the agents lost all their seniority, pension and health and welfare rights because they were unable to return to their prior employment within the Teamster industry (Tr. 96-97). Agents with as many as 18 years seniority, years of service as stewards, chief stewards and business agents, suddenly were not only out of work, but also were unable to participate any longer in union affairs (Tr. 331-339). Indeed several of the business agents were no longer Teamster members and were forced into leaving the industry after many years of loyal service as Teamsters. See Motion of Frank Howald to withdraw from appeal filed with the Court of Appeals on or about June 7, 1979.

It is from this wholesale discharge and pattern of hostility directed at driving the business agents from the Teamster industry and at depriving them of their Landrum-Griffin rights which forms the basis of the lawsuit and the appeal herein. Specifically, the Petitioners appeal from the District Court's opinion and order of March 30, 1979 granting Defendants' motions for summary judgment and the order of the United States Court of Appeals for the Sixth Circuit upholding the District Court's decision that plaintiffs had not alleged a valid cause of action against the Defendants (Appendix).

REASONS FOR GRANTING THE WRIT

Both the District Court opinion and the opinion of the Sixth Circuit Court of Appeals adopted the minority line of authority among a split in the circuit courts on whether union employees or officers who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them as union members. Prior to the Sixth Circuit's decision a majority of the circuit courts have held such discharges unlawful. *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *DeCampli v. Greeley*, 293 F. Supp. 746 (N.J. 1968); *Gabauer v. Woodcock*, 520 F.2d 1084 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976); *Bradford v. Textile Workers of America, AFL-CIO*, 563 F.2d 1138 (4th Cir. 1977); *Grand Lodge of International Ass'n of Machinists v. King*, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964); *Retail Clerks Union, Local 648 v. Retail Clerks Int. Ass'n*, 299 F. Supp. 1012 (D.D.C. 1969). Other courts have held otherwise. *Sheridan v. United Bro. of Carpenters*, 306 F.2d 152 (3d Cir. 1962); *Wambles v. International Bro. of Teamsters, Chauffeurs*, 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, Communications Wkrs.*, 570 F.2d 439 (2d Cir. 1978).[3]

Petitioners submit that the Sixth Circuit erred in upholding the discharges of the appointed business agents and in following the minority authority of the Second, Third, and Fifth Circuits. Petitioners submit that the majority authority holding said discharges to be unlawful of the Fourth, Seventh, Eighth and Ninth Circuits is the better viewpoint since important Landrum-Griffin rights

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3. See *Newman v. Communication Workers*, 101 LRRM 2265 (2d Cir. April 25, 1979). On remand the 2nd Circuit seems to have joined the majority of authority.

were violated. These rights extend not only to the petitioners and all the original fifteen business agents but also extend to all union members.

As a result of evidence discovered in Congressional hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering, Congress felt it necessary to take remedial action in the form of legislation to insure the processes of democratic self-government within labor organizations. The act which governs and controls the internal affairs of a labor organization is the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Section 401 *et seq.*, commonly known as the Landrum-Griffin Act.

Title 1 of the Act, known as the "Bill of Rights of Members of Labor Organizations", provides certain protection for rank-and-file members of labor organizations directly applicable here. Section 411(a)(1) and (2) provide as follows:

> "(a)(1) *Equal rights.*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."
>
> "(2) *Freedom of speech and assembly.*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and

reasonable rules pertaining to the conduct of meetings: *Provided,* that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 529 of the same Act provides additional safeguards for union members as follows:

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section."[4]

Simply stated, the business agents were fired for exercising their rights to vote in elections of officers of their choice, and for exercising their rights to meet and assemble with other members to express their views, arguments and opinions upon candidates in the 1977 officers' election for Teamsters Local 20. Their acts and conduct are and were protected by the provisions of §401(a)(1) and (2) of Landrum-Griffin.

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4. Section 412 is the jurisdictional grant and provides as follows:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located."

In addition, it is the position of the business agents that §529 prohibits the Defendants from "otherwise disciplining" its members for exercising rights to which they are entitled under §401(a)(1) and (2). Thus their removal as business agents was such prohibited discipline.

Not surprisingly, the precise issues raised in this case have been faced by a number of Circuits. The overwhelming weight of authority holds that the actions engaged in by Defendant Leu by his wholesale firing of the business agents for their political support of Omar Brown is conduct prohibited by Landrum-Griffin. *Grand Lodge v. King*, 335 F.2d 340, 56 LRRM 2639 (9th Cir. 1959), *cert. denied*, 379 U.S. 920, 57 LRRM 2512 (1964); *Bradford v. Textile Workers*, 563 F.2d 1138, 96 LRRM 2690 (4th Cir. 1977); *Wood v. Dennis*, 489 F.2d 849, 84 LRRM 2662 (7th Cir. 1972), *cert. denied*, 415 U.S. 960, 85 LRRM 2530 (1974); *Gabauer v. Woodcock*, 520 F.2d 1084, 89 LRRM 2961 (8th Cir. 1975); *Cooke v. Orange Belt District Council*, 529 F.2d 815, 91 LRRM 2349 (9th Cir. 1976). See also, *Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 70 LRRM 3366 (D.D.C. 1969); *DeCampli v. Greeley*, 293 F. Supp. 746, 69 LRRM 2786 (D.N.J. 1968); *George v. Bricklayers Union*, 255 F. Supp. 239, 62 LRRM 2478 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 LRRM 2577 (D.D.C. 1974), *aff'd without op.*, 515 F.2d 1018 (D.C. Cir. 1975), 90 LRRM 2844; *Alvino v. Bakery Workers Union*, 46 LRRM 2812 (D.C. Cir. 1960), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964). For contra authorities see *Newman v. Local 1101, Communication Workers of America*, 570 F.2d 439 (2d Cir. 1970); *Wambles v. International Brotherhood of Teamsters, etc.*, 488 F.2d 888 (5th Cir. 1974). *Martire v. Laborers' Local Union 1058*, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969).

There are two established theories which support the business agents' position in this case. First, the vast majority of cases which have dealt with the subject and which are noted above have held that the removal from a union position as a result of the expression of political views infringes upon rights protected by 29 U.S.C.A. §411 (a)(1) and (2) and thus to be fired for exercising those rights is a form of discipline prohibited by 29 U.S.C.A. §529. See, e.g., *Grand Lodge v. King*, 56 LRRM at 2642; *Wood v. Dennis*, 84 LRRM at 2665-2666; *Gabauer v. Woodcock*, 29 LRRM at 2965-2966; *Cooke v. Orange Belt District Council*, 91 LRRM at 2351-2352.

Additionally, event absent a finding by this Court that the removal from appointive union office for engaging in political activity was "discipline" within the meaning of 29 U.S.C. §529, it is submitted that 29 U.S.C.A. §411 (a)(1) and (2) present an independent basis via 29 U.S.C.A. §412 to prevent retaliation by a local union or its officer, in any form, for engaging in acts of voting, free speech or assembly protected by the Act. *Salzhandler v. Caputo*, 52 LRRM 2910, 2911; *Miller v. Holden*, 535 F.2d 912, 95 LRRM 2152, 2155 (5th Cir. 1976).[5]

Perhaps the matter was most succinctly stated by Judge Gesell of the District Court of the District of Columbia when he said simply:

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5. The Fifth Circuit was one of those few circuits which held that removal from appointive office was not the kind of "discipline" contemplated by 29 U.S.C.A. §529. See, *Wambles v. International Brotherhood of Teamsters*, 488 F.2d 888 (5th Cir. 1974). The decision in *Miller v. Holden*, *supra*, undercut *Wambles* in two ways. First, *Holden* finds an independent cause of action for removal from union office in political retaliation in 29 U.S.C.A. §411(a)(1) and (2) through §412 regardless of the applicability of §529. In addition, *Wambles* is explicitly confined to its facts at 95 LRRM 2155.

The Third Circuit also rejects the majority view, *Sheridan v. Carpenters*, 306 F.2d 152, 50 LRRM 2637 (3d Cir. 1962). But compare *DeCampli v. Greeley*, *supra*, at 69 LRRM 2786, which distinguishes *Sheridan* and relies on *Grand Lodge v. King*.

"Union members cannot, under the terms of the Act, be placed in the predicament of choosing between the right of free expression under §101(a) [29 U.S.C.A. §411(a)] and their jobs. This fundamental concept of the goals and prohibitions of the LMRDA is supported by the decision[s] in this District . . . . (citations omitted)." *Local 648 v. Retail Clerks International Association, supra,* at 70 LRRM 3371.

In short, the evidence below demonstrated that after a vigorous election campaign in which the business agents supported the opponent of Defendant Leu, they were summarily discharged, without notice, for engaging in the right to vote and the right to freely express their views on union candidates for election; rights protected by the LMRDA (Tr. 70, 90-91).

It has been clear since its inception that the LMRDA was *to be read broadly* to support the Congressional mandate of permitting union members to participate in the political affairs of their union without interference or retribution. See, *Wirtz v. Hotel Employees,* 391 U.S. 492, 68 LRRM 2305 (1968); *Wirtz v. Bottleblowers Assn.,* 389 U.S. 463, 67 LRRM 2129 (1968); *Calhoun v. Harvey,* 379 U.S. 134, 57 LRRM 2561 (1964); *Bakery & Confectionery Workers Intern'l U. v. Ratner,* 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964); *Kuebler v. Lithographers Local 24-P,* 473 F.2d 359, 82 LRRM 2717 (6th Cir. 1973).

In the case at bar it is not even necessary to take a broad view of the Act's proscriptions. Removal from office because of political expression whether viewed as "discipline" under §529 or an "infringement" under §412 is equally unlawful and clearly works to frustrate the Congressional policy mandated by the Act. There are clear lines of authority, supporting either proposition which, it is respectfully urged, this Court should follow.

CONCLUSION

The District Court and the Sixth Circuit Court of Appeals in affirming the Defendants' motion for summary judgment, adopted the minority viewpoint among the Circuit Courts of Appeal in upholding the discharge of the fifteen business agents for their political support of Defendant Leu's opposition candidate, Omar L. Brown during the 1977 officers election. The majority of the Circuit Courts of Appeal (Second Circuit, Fourth Circuit, Seventh Circuit, Eighth Circuit and Ninth Circuit) have clearly held that union employees who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them as union members. The Sixth Circuit erroneously adopted the minority viewpoint held by the Third Circuit Court of Appeals and the Fifth Circuit Court of Appeals. Accordingly, petitioners request that a Writ of Certiorari be allowed and this Court review the judgment of the Court of Appeals and reverse its decision affirming the District Court's granting of Defendants' motion for summary judgment holding that Petitioners have not asserted a cause of action under the LMRDA.

Respectfully submitted,

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APPENDIX

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed March 23, 1981)

No. 79-3415

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAYMOND NAVARRO, *et al.*,
Plaintiffs-Appellants,

v.

HAROLD D. LEU, *et al.*,
Defendants-Appellees.

ORDER

Before: MERRITT and KENNEDY, *Circuit Judges;* TAYLOR, *District Judge**

Plaintiffs appeal from a judgment of the District Court granting summary judgment for defendants. Plaintiffs, 15 appointed union business agents, were fired by defendant Harold D. Leu upon his election as union president after a hotly contested series of elections which had to be rescheduled because of irregularities. The constitution of the union provided that business agents serve at the pleasure of the president. Following their discharges,

*Honorable Anna Diggs Taylor, District Judge, United States District Court, Eastern District of Michigan, sitting by designation.

plaintiffs instituted this action alleging those discharges violated their rights under sections 101(a)(2) and 609 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 411(a)(2), and 529.

Section 101(a)(2) provides:

> *Freedom of speech and assembly* - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with the performance of its legal or contractual obligations.

Section 609 provides:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

The courts have split on the issue of whether union employees (or officers) who are also union members have a cause of action under the LMRDA when they are discharged in retaliation for exercising rights guaranteed them

as union members. A majority have held such discharges unlawful. *Wood v. Dennis*, 489 F.2d 849 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *DeCampli v. Greeley*, 293 F. Supp. 746 (N.J. 1968); *Gabauer v. Woodcock*, 520 F.2d 1084 (8th Cir. 1975), *cert. denied*, 423 U.S. 1061 (1976); *Bradford v. Textile Wkrs. of America, AFL-CIO*, 563 F.2d 1138 (4th Cir. 1977); *Grand Lodge of International Ass'n of Machinists v. King*, 335 F.2d 340 (9th Cir.), *cert. denied*, 379 U.S. 920 (1964); *Retail Clerks Union, Local 648 v. Retail Clerks Int. Ass'n*, 299 F. Supp. 1012 (D.D.C. 1969). Other courts have held otherwise. *Sheridan v. United Bro. of Carpenters*, 306 F.2d 152 (3d Cir. 1962); *Wambles v. International Bro. of Teamsters, Chauffeurs*, 488 F.2d 888 (5th Cir. 1974); *Newman v. Local 1101, Communications Wkrs.*, 570 F.2d 439 (2d Cir. 1978). In dismissing plaintiffs' cause of action, the District Court followed the minority view as set out in *Wambles, supra*. This Court agrees with the Fifth Circuit that a union president should be able to work with those who will cooperate with his program and carry out his directives, and that these business agents, who served at the pleasure of the union president, and actively supported the president's opponent could be removed from their employment as union business agents.

Accordingly, the judgment is affirmed for the reasons set forth in the well-written opinion of Judge Young filed on March 30, 1979.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed March 30, 1979)

Civil No. C-78-8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAYMOND NAVARRO, *et al.*,
Plaintiffs,

VS.

HAROLD LEU, *et al.*,
Defendants.

OPINION AND ORDER

YOUNG, *J*:

This cause came to be heard upon motions of the defendants for summary judgment. Fed. R. Civ. P. 56. Plaintiffs have opposed the motion.

The action was commenced on January 6, 1978, by fifteen individuals who are members of Local 20 of the Teamsters Union. Jurisdiction is based on the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§401, *et seq.* Each plaintiff, it is alleged, was serving as an appointed business agent for Local 20. During the union presidency campaign in November of 1977, plaintiffs campaigned for the slate headed by Mr. Omar Brown. However, the

defendant Harold Leu was declared the winner in that election.[1]

Rule 56(c), Fed. R. Civ. P. provides for the entry of summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact. Here, the record before the Court is extensive. On January 17, 1978, a hearing was held on a motion for preliminary injunction where evidence was taken and the arguments of counsel heard. Several depositions and affidavits are on file as well as the detailed briefs of counsel. On the basis of this record, the Court can determine that there is no genuine issue of material fact and that summary judgment may be entered.

Title 1 of the LMRDA, 29 U.S.C. §§401, *et seq.*, establishes a bill of rights for union members. Title 29 U.S.C. §§411(a)(1) and (2) provide:

> (1) Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> (2) Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candi-

1. The election itself is contested in a separate action. *Marshall, Secretary v. Local 20, etc.*, C 78-407, N.D. Ohio, W. Division.

> dates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Title 29, U.S.C. §529 provides:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members from exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

Essentially, two lines of authority have developed regarding the employment termination of union employees for political activity. One line of authority would hold the discharge unlawful. *Grand Lodge v. King,* 335 F.2d 340 (9th Cir. 1959), *cert. denied,* 379 U.S. 920 (1964); *George v. Bricklayers Union,* 255 F.Supp. 239 (E.D. Wisc. 1966); *Price v. United Mine Workers,* 376 F.Supp. 1015 (D.D.C. 1974); *aff'd without opinion,* 515 F.2d 1018 (D.C. Cir. 1975). A more modern line of authority would permit the discharge. *Newman v. Local 1101, Communication Workers of America,* 570 F.2d 439 (2d Cir. 1978); *Wambles v. International Brotherhood of Teamsters, etc.,* 488 F.2d 888 (5th Cir. 1974). *Martire v. Laborers' Local Union 1058,* 410 F.2d (3d Cir.), *cert. denied,* 396 U.S. 903 (1969).

The basis principles of the statutory provisions are rather straightforward. The statutes were designed to protect the rghts of *union members. Wambles v. International Brotherhood of Teamsters, supra; Newman v. Local 1101, supra.* Plaintiffs, while acknowledging a distinction between union membership and employment in the union, claim that the distinction should not apply because of the "unique nature" of this local's organization.

Local 20 apparently is a fairly large local with some 14,000 members. The bylaws of the union provide for a legislative assembly known as the Stewards' Council. This institution is designed to govern the affairs of the union and is made up of officers, shop stewards and full time business agents or representatives of the union. As appointed business agents, the plaintiffs sat on the Stewards' Council and participated in the formation of union policy. After each plaintff was terminated as a business agent by the defendants, it was necessary for him to attempt to return to employment within the industry. Termination as a business agent did not mean that the plaintiffs were otherwise ineligible to continue union membership.

As a member of a union, a union official or employee enjoys the rights guaranteed by the LMRDA. Suspension or removal for the exercise of protected rights would violate the Act. *Newman v. Local 1101, supra,* and cases cited therein. On the other hand, a union official or employee has certain duties to the organization he represents as well as to its leadership. Once in a position of authority within the union, the leadership can legitimately expect a member to engage in conduct consistent with the leadership's established policies. Unless the leadership can command a certain degree of loyalty from the union's agents, it can not function effectively.

In this case, plaintiffs were wearing two hats. They were union members and union officials. Clearly there has been a tension between these two roles. The Court believes that the better authority is that which would permit the termination of union employees. The firings here were only from appointed membership on the Stewards' Council. The union leadership can discipline a union steward or agent by removing him from his appointed position, where, as here, the members, rights of free speech as *union members* has not been affected. By terminating the plaintiffs here, they have not lost any of their rights as union members. They remain free to work in the industry and to seek union office.

Plaintiffs contend that the actions of the defendant Harold Leu were taken in bad faith and in retaliation for union campaign activity. The record is clear in this case that the union presidency election which gave rise to the present situation was contested hotly. Plaintiffs here campaigned openly for the candidate who was declared the loser. For the reasons set forth herein, this Court finds that plaintiffs were subject to termination from their appointed positions without the necessity of a determination by the newly elected leadership that they could not support the new policies. The evidence does not indicate that the firings were an attempt to stifle dissent in the union.

Finally, plaintiffs contend in their response to defendants' motion for summary judgment that they have been barred from future employment in the industry by the defendants. The action here, however, was not directed at whether the defendants, in concert with employers, schemed to deprive plaintiffs of employment in the industry. The complaint questioned only whether the terminations from union office violated the Act. Further, plaintiffs have not sought leave to amend, and at this late

date, such an amendment would be untimely. In any event, this Court does not have a basis to expand the focus of this litigation to the question of whether the union membership rights of the plaintiffs have been violated. If these serious allegations can be established, they must be the substance of a separate action.

THEREFORE, for the reasons stated, good cause appearing, it is

ORDERED that the motion of the defendant union for leave to file a reply brief be, and it hereby is, sustained, and the clerk shall file the previously lodged reply brief; and it is

FURTHER ORDERED that the motions of the defendants for summary judgment be, and they hereby are, sustained, and the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

/s/ DON J. YOUNG
United States District Judge

UNITED STATES CODE

29 U.S.C.A. §411(a)(1) and (2)

(a)(1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly bewore the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C.A. §412

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located.

29 U.S.C.A. §529

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.